

## INSURANCE DIVISION[191]

### Notice of Intended Action

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 502.605, the Insurance Division hereby gives Notice of Intended Action to amend Chapter 50, “Regulation of Securities Offerings and Those Who Engage in the Securities Business,” Iowa Administrative Code.

Iowa Code chapter 502, among other things, prescribes the terms and conditions under which issuers make securities offerings and under which broker-dealers and investment advisers operate. The proposed amendments to Chapter 50, through new rule 191—50.47(502), require every investment adviser registered in Iowa to create and implement written procedures to address business continuity and succession planning related to possible instances of disruptions or cessation of business activities. Proposed rule 191—50.47(502) is based on the North American Securities Administrators Association, Inc.’s “Model Rule on Business Continuity and Succession Planning” (Model Rule 203(a)-1A, Appendix A to the NASAA Guidance on Business Continuity and Succession Planning for State-Registered Investment Advisers). The amendments also include minor language corrections to other rules in Chapter 50.

The Division intends that these amendments will go into effect January 25, 2017, and that investment advisers must be in compliance with new rule 191—50.47(502) by July 1, 2017.

Any interested person may make written suggestions or comments on these proposed amendments on or before November 15, 2016. Such written materials should be directed to Rosanne Mead, Iowa Securities and Regulated Industries Bureau, Iowa Insurance Division, Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa 50319; fax (515)281-3059; e-mail [rosanne.mead@iid.iowa.gov](mailto:rosanne.mead@iid.iowa.gov).

Also, there will be a public hearing on November 15, 2016, at 10 a.m. at the offices of the Iowa Insurance Division, Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Division and advise of specific needs.

The Division’s general waiver provisions at 191—Chapter 4 apply to these rules.

These rules will impose no fiscal impact to the State.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 502.

The following amendments are proposed.

ITEM 1. Amend subrule 50.2(1), introductory paragraph, as follows:

**50.2(1)** The administrator may assess the broker-dealer or investment adviser for reasonable charges of travel, lodging, and other expenses incurred by Iowa insurance division staff or independent persons conducting an audit or inspection and directly attributable to an audit or inspection made pursuant to Iowa Code section 502.411(4). The assessment of costs of meals, lodging, transportation, and other actual and necessary travel expenses, if any, incurred by persons conducting an audit or inspection shall be determined in accordance with one of the following, as agreed by the administrator and the persons conducting an audit or inspection:

ITEM 2. Amend subrule 50.3(3) as follows:

**50.3(3)** All no-action determinations shall be based upon the representations made by the requesting party in the letter and information filed, since any different facts or conditions might require a different

conclusion. The no-action letter shall express the ~~division's~~ administrator's position on enforcement action only and shall not purport to express any legal conclusion on the questions presented. No determination shall take a position on whether or not any disclosure materials satisfactorily comply with the antifraud and civil liability sections of the Act.

ITEM 3. Adopt the following new rule 191—50.47(502):

**191—50.47(502) Business continuity and succession planning for investment advisers.**

**50.47(1)** On and after July 1, 2017, every investment adviser registered in Iowa shall establish, implement, and maintain a written business continuity and succession plan. The business continuity and succession plan shall be created and implemented in a manner consistent with the NASAA Guidance on Business Continuity and Succession Planning for State-Registered Investment Advisers, which is available on the Iowa insurance division's Web site, [www.iid.iowa.gov](http://www.iid.iowa.gov). In developing the procedures for the business continuity and succession plan, the investment adviser shall consider, among other things, the size of the firm, the types of services provided and the number of locations of the investment adviser. The business continuity and succession plan shall provide for, at a minimum, all of the following:

- a. The protection, backup, and recovery of books and records;
- b. Alternate means of communications with customers, key personnel, employees, vendors, service providers (including third-party custodians of securities) and regulators, that will allow the communication of certain events, including, but not limited to, providing notice of a significant business interruption or the death or unavailability of key personnel or other disruptions or cessation of business activities;
- c. Office relocation in the event of temporary or permanent loss of a principal place of business;
- d. Assignment of duties to qualified responsible persons in the event of the death or unavailability of key personnel; and
- e. Other means of minimizing service disruptions and client harm that could result from a sudden significant business interruption.

**50.47(2)** Every investment adviser registered in Iowa shall include a copy of the investment adviser's written business continuity and succession plan with the first registration renewal required by Iowa Code section 502.402 that the investment adviser files on and after July 1, 2017. The administrator shall review an investment adviser's written business continuity and succession plan to determine whether it is consistent with the NASAA Guidance on Business Continuity and Succession Planning for State-Registered Investment Advisers and whether it takes into account the considerations listed in subrule 50.47(1). The administrator may request the investment adviser to modify the filed business continuity and succession plan according to the administrator's suggestions. After the initial filing, the investment adviser shall submit to the administrator any substantive amendment to the business continuity and succession plan with the registration renewal following the amendment. The administrator may request from the investment adviser at any time information regarding the business continuity and succession plan, including but not limited to evidence that it has been implemented and maintained.

This rule is intended to implement Iowa Code chapter 502.

ITEM 4. Amend paragraph **50.52(2)“e”** as follows:

- e. The filing of an application for hearing with the district court will stay the proceedings of the ~~division~~ administrator.

ITEM 5. Amend paragraph **50.53(2)“e”** as follows:

- e. The filing of an application for hearing with the district court will stay the proceedings of the ~~division~~ administrator.

ITEM 6. Amend paragraph **50.54(2)“e”** as follows:

- e. The filing of an application for hearing with the district court will stay the proceedings of the ~~division~~ administrator.

ITEM 7. Amend rule 191—50.81(502) as follows:

**191—50.81(502) Notice filings for Rule 506 offerings.** ~~Beginning January 1, 2016, an~~ An issuer offering a security that is a covered security pursuant to Section ~~18(b)(4)(D)~~ 18(b)(4)(E) of the Securities Act of 1933 shall submit no later than 15 days after the first sale of such federal covered security in Iowa an electronic filing and fees through [www.efdnasaa.org](http://www.efdnasaa.org), under “filers and issuers.”

This rule is intended to implement Iowa Code section 502.302(3).